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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,905	04/21/2006	Raphael Belaubre	108-2153	7431
43749 7590 08/12/2009 CHRISTOPHER PARADIES, PH.D. FOWLER WHITE BOGGS BANKER, P.A. 501 E KENNEDY BLVD, STE. 1900 TAMPA, FL 33602			EXAMINER NGUYEN, PHONG H	
			ART UNIT 3724	PAPER NUMBER
			MAIL DATE 08/12/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,905	<b>Applicant(s)</b> BELAUBRE, RAPHAEL	
	<b>Examiner</b> PHONG H. NGUYEN	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12, 14, 15 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 14, 15 and 18-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 12, 14, 15, and 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Keppel et al. (US 5,937,523; as cited in IDS; hereafter Van Keppel) in view of DiMatteo et al. (US 2001/005941; as previously cited; hereafter DiMatteo), and/or Lawrence (US 1,698,136), and/or Hover (US 83,062), and/or Hedge (US 473).
3. With respect to claim 12, Van Keppel discloses a cigar cutter device comprising: a pair of blades (30), each of the pair of blades having a pivot axis (defined by 16), and a sharp cutting edge (34), the cutting edge having a concave leading profile (see figure 2 or 3); a means for connecting together the pair of blades (12), the means for connecting having an orifice (26) and a connecting element (16) operatively engaging the pivot axis of the pair of blades, wherein the orifice is suitable for receiving a cigar (see figure 1), when the blades are in the closed position, the blades are superposed. Van Keppel discloses the blades hinging on the same pivot axis. Van Keppel does not disclose the blades each having a unique pivot axis with unique connecting elements. Further, Van Keppel does not disclose gears mounted on each blade such that the plurality of gear teeth of one of the pair of blades, operatively meshes with the plurality of gear teeth of the other of the pair of blades whereby the cutting edges of the pair of blades simultaneously and symmetrically move during cutting.

Examiner notes that this type of hinged connection between two pivoting elements is an old and well known geared joint. The art of Hedge discloses two pivoted members (a) having

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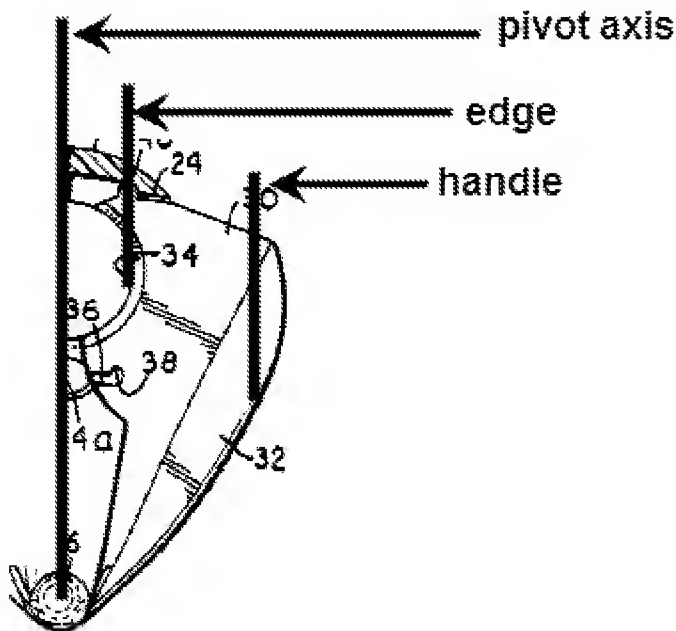
integrated gear cogs (c). Each pivoting member has its own pivot axis. Hedge further discloses means for connecting (b) on each side of the pivoting arms and further connecting elements (rivets, line 70). This double pivot axis gear joint is used to “insure the accurate and equal turning upon each center in the process of opening and closing the joint” (lines 96-99). Hover discloses another hinge (c) having two distinct pivot axes (the two axes of the two different doors B) having integrated meshing gear teeth (A). This setup is used such that when force is applied to one side of the hinge (a first door) the second door moves (pivots, rotates) in an equal manner (see second paragraph of the first column). The art of Lawrence also discloses a similar gear hinge having two separate pivot axes. Lawrence describes the benefits of such a setup to be that the hinges cause the two elements to be pivoted by the hinge “to move simultaneously and equally and the members are inter-braced through the hinge upon each other” (lines 21-25). Further, DiMatteo discloses a pair of shears with which the handles have a similar joint setup. The handles (12) have integrated gear portions (34, 36) and distinct pivot axes (60, 62). The gears mesh in such a way that the force of cutting is equally distributed between the two handles (paragraph 26). As shown by the above references, this common joint is known for creating symmetric, smooth motion between two pivoted elements as well as distributing force equally between the two elements. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cigar cutter of Van Keppel to have the blades each having a unique pivot axis with unique connecting elements and for the blades to have operatively meshing gear cogs about the pivot axes projecting outward toward each other in view of DiMatteo and/or Lawrence and/or Hover and/or Hedge in order to have the blades pivot in a symmetric manner and distribute the force between the two blades.

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4. With respect to claim 14, Van Keppel discloses the device wherein the means for connecting includes a pair of plates (18) disposed on opposite sides of the pair of blades sandwiching the pair of blades, the pair of plates each having a hole (26) defining the orifice of the means for connecting.

5. With respect to claim 15, the modified cutter of Van Keppel discloses the device wherein the plurality of teeth of both of the pair of blades are disposed in a common plane disposed between the cutting edges of the pair of blades. Examiner notes that the teeth have to be disposed in the same plane and between the cutting edges in order to comply with any of the teachings of the hinge cited above.

6. With respect to claim 18, Van Keppel discloses the device wherein the cutting edge of each of the pair of blades is disposed between the pivot axis and a handle (32) is formed in a portion of each of the pair of blades opposite of the pivot axis.



7. With respect to claims 19 and 20, Van Keppel discloses the device wherein the means for connecting includes a resilient connection means (torsion spring 42) between the pair of blades holding the pair of blades in an open position, and the device further comprises a temporary closure means (44 and nub 38) for holding the pair of blades in the closed position.

8. With respect to claim 21, Van Keppel discloses the device including an abutment guide means (the raised portion of the handle contacts the body as seen in figure 2 which stops the motion) for enabling the relative displacement of each of the pair of blades to be limited. Further Van Keppel discloses a pin (44) in a track (36) that has a side wall at the furthest possible closure point (see figure 6).

9. With respect to claim 22, the modified apparatus of Van Keppel discloses using a method of cutting a cigar using the cigar cutter comprising: using the device wherein the cigar is inserted between the cutting edges (see figure 1) of the pair of blades through the orifice; and moving the cutting edges of the pair of blades towards each other, simultaneously and symmetrically (as a result of the modified hinge between the blades), such that the pair of blades are in the closed position and the cigar is cut.

10. With respect to claims 23-25, Van Keppel discloses the device wherein the abutment guide means includes a slider (44) and an arcuate slideway channel (36), and the slider is coupled to at least one of the pair of plates and engages the slideway such that displacement of the pair of blades is limited to no greater than a length of the slideway (the slider will contact the slideway end wall as seen in figure 6), formed in both of the blades and the slider pin is coupled to each of the pair of plates and extending through both of the slideways (see figure 6).

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11. With respect to claim 26, the modified apparatus of Van Keppel does not disclose the device wherein the plurality of gear teeth is limited to two gear teeth per each of the pair of blades. Examiner notes that it is common practice in the gear arts to provide only the necessary number of cogs on a gear that are needed. For example, on a circular gear, if the gear only turns 30 degrees, then cogs are only provided on approximately 30 degrees of the circumference of the circular gear. This technique is clearly shown in all of the references used to describe this style of joint above. Each reference has a unique range of motion and a corresponding number of teeth. The best example of this is the art of Hedge which only has integrated teeth extending around only the equivalent of 90 degrees of a circle (see figure 1). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the gears portions of the modified cutter of Van Keppel to only have two teeth on each meshing side. There are a finite number of teeth (as well as a numbers of gear teeth pitches) that can be positioned around the circumference, and it would have been obvious to try and remove the teeth which aren't used through the full range of motion of the cigar cutter with a reasonable expectation of success. Removing unnecessary teeth doesn't effect the operation of the cigar cutter.

### ***Response to Arguments***

12. Applicant's arguments filed 05/18/2009 have been fully considered but they are not persuasive.

The Applicant argues that since Van Keppel expressly teaches away from the need for any more complex and costly mechanism (col. 1, lines 22-26), it would not have been obvious to

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one skilled in the art to further modify Van Keppel's cigar cutter. This argument is not persuasive. Van Keppel merely provides an alternative cigar cutter and does not expressly bar any one from making improvements on his cigar cutting device unless the improvements are within the scope of his invention. Simply using Van Keppel's cigar cutter or making an improvement to enhance the function of Van Keppel's cigar cutter would be within the knowledge of one skilled in the art. For example, Applicant's cigar cutter is an improvement of Van Keppel's cigar cutter or JP11-18745's cigar cutter.

The Applicant argues that his invention is not a mere combination of a "finite number of identified, predictable solutions" from "known options". This argument is not persuasive. The claimed invention is a mere combination of a "finite number of identified, predictable solutions" from "known options". Basic structure of the claimed cigar cutter is taught by Van Keppel. The use of two separate pivot axis and meshing gear to have the blades pivot in a symmetrical manner, to distribute force evenly between two blades and to use less applied force for cutting a cigar is well known in the art as evidenced by DiMatteo, Lawrence, Hover and Hedge.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).



***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHONG H. NGUYEN whose telephone number is (571)272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phong H Nguyen/  
Examiner, Art Unit 3724  
August 11, 2009